

United States
Circuit Court of Appeals
For the Ninth Circuit.

R. E. HUSTON and CLARA S. HUSTON, His
Wife,

Plaintiffs in Error,

vs.

THE BIG BEND LAND COMPANY, a Corpo-
ration, E. T. HAY and J. C. McCAUST-
LAND,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Eastern District of Washington,
Northern Division.

United States
Circuit Court of Appeals
For the Ninth Circuit.

R. E. HUSTON and CLARA S. HUSTON, His
Wife,

Plaintiffs in Error,

vs.

THE BIG BEND LAND COMPANY, a Corpo-
ration, E. T. HAY and J. C. McCAUST-
LAND,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Eastern District of Washington,
Northern Division.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Assignments of Error.....	17
Bond on Writ of Error.....	18
Certificate of Clerk U. S. District Court to Transcript of Record.....	29
Citation on Writ of Error (Copy).....	27
Citation on Writ of Error (Original).....	25
Complaint.....	1
Demurrer	10
Memorandum Opinion.....	12
Names of Attorneys of Record.....	1
Order Dismissing Cause.....	11
Petition for Writ of Error.....	15
Praecipe for Transcript of Record.....	28
Summons	8
Writ of Error (Copy).....	23
Writ of Error (Original).....	21

Names of Attorneys of Record.

M. E. MACK, Empire State Building, Spokane,
Washington,

JOHN G. BARNES, Marion Building, Seattle,
Washington,

Attorneys for Plaintiffs and Plaintiffs in
Error.

GRAVES, KIZER & GRAVES, Old National Bank
Building, Spokane, Wash., Attorneys for
Defendants and Defendants in Error.

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, His
Wife,

Plaintiffs,

vs.

THE BIG BEND LAND COMPANY, A Corpora-
tion, E. T. HAY and J. C. McCAUSTLAND,
Defendants.

Complaint.

The plaintiffs complain and allege:

I.

That during all the times hereinafter mentioned
they were, and now are, husband and wife, were, and
are citizens of the United States of America, and at
this time are, and for more than three years last

past have been, citizens and residents of the State of Idaho.

II.

"That during all the times hereinafter mentioned the defendant, The Big Bend Land Company, was and now is, a corporation created, organized and existing under and by virtue of the laws of the State of Washington, with its office and principal place of business situate in the city of Spokane, Spokane County, State of Washington, is a citizen of the State of Washington and resident of the Northern Division of the Eastern District of Washington.

III.

That the defendants E. T. Hay and J. C. McCaustland are each of them citizens of the State of Washington, and residents of the Northern Division of the Eastern District of Washington.

IV.

That on the 4th day of March, 1915, the defendant, The Big Bend Land Company, as principal, and the defendants E. T. Hay and J. C. McCaustland, as sureties therein, in that certain proceeding for unlawful detainer of real estate in the Superior Court of the State of Washington, for Lincoln County, numbered 6836 therein, wherein the defendant herein, The Big Bend Land Company, is plaintiff, and the plaintiffs herein are defendants, made, executed, delivered and filed with the Clerk of said Superior Court of Lincoln County, their written obligation and bond wherein the defendants bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, unto

the plaintiffs herein, for the payment of the penal sum of Eight Thousand Dollars, upon the following conditions which are set forth in said bond in the words following:

“The condition of the above and foregoing obligation is such that whereas, in the above-entitled court the above-named plaintiff has commenced an action against the above-named defendants to recover the possession of certain real estate described in the complaint herein and in said action has procured a writ of restitution to be issued restoring said real estate to the possession of plaintiff.

Now, therefore, if said plaintiff shall prosecute said action without delay and pay all costs that may be adjudged to the above-named defendants and all damages that they, or either of them, may sustain by reason of the issuance of such writ should the same be wrongfully sued out, then this obligation to be null and void, otherwise to remain in full force and effect.”

V.

That on the said 4th of March, 1915, said defendant, The Big Bend Land Company, delivered the writ of restitution referred to in said bond to the sheriff of Lincoln County, State of Washington, with instruction and direction to serve and execute the same upon plaintiffs herein, and said sheriff did serve the same upon plaintiffs herein on said 4th day of March, 1915, and on the 10th day of March, 1915, said sheriff executed said writ of restitution

by ejecting the plaintiffs herein from the actual and peaceable possession of the following described lands and real estate situate in Lincoln County, State of Washington, and which are the lands and real estate described in the complaint in said proceeding numbered 6836 in said Superior Court to wit:

The fractional North half (N.1½) of Section three (3), Township twenty-four (24) North, of Range thirty-two (32) East, W. M., the same being also and otherwise, described as Lots numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 in Section three (3) Township Twenty-four (24) North of Range thirty-two East, W. M., and containing four hundred and twenty and sixty-one-hundredths (420.60) acres, more or less, according to the United States Government survey thereof

and placing The Big Bend Land Company in the possession of the whole thereof, which possession of the whole thereof of said lands and real estate the said The Big Bend Land Company has ever since said 10th day of March, 1915, kept and held, and now keeps and holds.

VI.

That after their eviction from said premises, as aforesaid, plaintiffs employed an attorney and defendant said proceeding numbered 6836, in the Superior Court of Lincoln County, and among other things in such defense they duly moved said Superior Court of Lincoln County to quash, set aside and hold for naught the issuance, service and execution of said writ of restitution under which they

were ousted from the possession of said lands, as aforesaid, upon the grounds and for the reasons that the issuance, service and execution of said writ of restitution were each and every of them without warrant or authority of law, and were wholly void, which motion to quash was by written order duly made and entered in said proceeding duly and regularly denied by said Superior Court of Lincoln County. That thereafter such proceedings were had and taken in said cause as that a judgment was rendered therein in said Superior Court on the 14th day of September, 1915, wherein it was adjudged that The Big Bend Land Company was entitled to the possession of the whole of said land and real estate, from which judgment these plaintiffs appeal to the Supreme Court of the State of Washington. That in said appeal such proceedings were had and taken in said cause, in the Supreme Court of the State of Washington, as that on the 30th day of October, 1917, said Court rendered its decision and judgment that for want of jurisdiction all the acts and doings of said defendant, The Big Bend Land Company, in having said writ of restitution issue, served and executed, as aforesaid, were each and every of them without warrant or authority in law, and were wholly void; that the said judgment of the Superior Court of Lincoln County was reversed, and said Superior Court of Lincoln County was directed to enter its judgment dismissing said proceeding. That the *remittitur* of said judgment, decision and order of the Supreme Court of the State of Washington was duly and

regularly transmitted to the Superior Court of Lincoln County, and by the clerk of said court duly and regularly filed and entered in said cause No. 6836 on the 6th day of December, 1917, and on the first day of May, 1918, the Superior Court of Lincoln County duly made and entered its judgment dismissing said proceeding, in accordance with said judgment and order of the Supreme Court of the State of Washington.

VII.

That by reason of the said wrongful suing out, issuance and execution of said writ of restitution plaintiffs have sustained damages in an amount greatly exceeding the sum of Eight Thousand Dollars, as follows: For attorney fees, and expenses of attorney in said proceeding No. 6836, in the Superior Court of Lincoln County and the Supreme Court of the State of Washington, One Thousand Five Hundred Dollars. for loss of profit from crops of winter wheat which plaintiffs had growing on said land on said 10th day of March, 1915, and of spring wheat which they could have produced during the season of 1915 on summer-fallowed and fall-plowed land which they had prepared for seeding on said land, at said time, ten thousand dollars.

VIII.

That no part of said damages have been paid by any of the defendants herein, nor at all.

Wherefore, plaintiffs demand judgment against the defendants, and against each of them, for the sum of Eight Thousand Dollars, together with their costs and disbursements herein, and for such other

and further relief as they may be entitled to receive in the premises.

M. E. MACK

Attorney for Plaintiffs.

State of Washington,
County of Spokane,—ss.

I, M. E. Mack, being first duly sworn upon oath, depose and say: That I am the attorney for the plaintiffs named in the foregoing complaint. That I know the contents thereof and believe the same to be true. That I make this verification for the reason that neither of the plaintiffs, nor any agent of theirs, is within the county of Spokane, Washington.

M. E. MACK.

Subscribed and sworn to before me this 2d day of March, 1921.

[Seal]

GRETA PATTISON,

Notary Public in and for the State of Washington,
Residing at Spokane.

Filed in the U. S. District Court, Eastern District of Washington, Mar. 2, 1921. William H. Hare, Clerk. By H. J. Dunham, Deputy.

United States of America. In the District Court of the United States, Eastern District of Washington, Northern Division.

Action brought in the said District Court, and the Complaint filed in the office of the Clerk of said District Court in the City of Spokane.

R. E. HUSTON and CLARA S. HUSTON, His Wife,
Plaintiffs,

vs.

THE BIG BEND LAND COMPANY, a Corporation,
E. T. HAY and J. C. McCAUSTLAND,
Defendants.

Summons.

M. E. MACK, Plaintiffs' Attorney.

The President of the United States of America,
GREETING: To the Big Bend Land Co., a corporation, E. T. Hay and J. C. McCaustland.

You are hereby summoned to appear in the District Court of the United States, for the Eastern District of Washington, Northern Division, holding terms at the city of Spokane, within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the Court aforesaid; and in case of your failure so to do, judgment will be rendered against you, according to the demand of the complaint, now on file in the office of the Clerk of said Court, a copy of which complaint is herewith served upon you.

WITNESS the Honorable FRANK H. RUDKIN,
Judge of the United States District Court for the
Eastern District of Washington, and the seal of
said District Court this second day of March, 1921.

W. H. HARE,
Clerk.

By _____,
Deputy Clerk.

United States of America,
Eastern District of Washington,—ss.

I hereby certify and return that I have personally served the within summons, together with the complaint in the within-entitled action, upon the within-named defendant by delivering to and leaving a true copy of the said summons and complaint with Big Bend Land Company, a corporation, by leaving with E. T. Hay, Secretary of said Big Bend Land Co., a corporation, E. T. Hay personally.

J. C. McCaustland by leaving with E. T. Hay, secretary of the Co., who accepted service for the said J. C. McCaustland.

J. E. McGOVERN,
United States Marshal.
By Fred Thorpe,
Deputy.

Fees	\$6.00
Mileage	.06
	—
	\$6.06

_____,
United States Marshal.
By _____,

Filed in the United States District Court, Eastern District of Washington. March 5, 1921. W. H. Hare, Clerk. By H. J. Dunham, Deputy.

In the District Court of the United States, for the
Eastern District of Washington, Northern
Division.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, His Wife,
Plaintiffs,

vs.

THE BIG BEND LAND COMPANY, E. T. HAY
and J. C. McCAUSTLAND,
Defendants.

Demurrer.

The defendants demur to the complaint herein and for their cause of demurrer say:

1. The complaint does not state facts sufficient to constitute a cause of action against the defendants, or either of them.

2. The cause of action attempted to be pleaded in the said complaint is barred by the statute of limitations applicable thereto.

Dated 18th March, 1921.

GRAVES, KIZER & GRAVES,
Attorneys for Defendants.

Filed in the U. S. District Court, Eastern District of Washington. Mar. 22, 1921. W. H. Hare, Clerk. By H. J. Dunham, Deputy.

In the District Court of the United States, for the
Eastern District of Washington, Northern
Division.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, His Wife,
Plaintiffs,

vs.

THE BIG BEND LAND COMPANY, et al.,
Defendants.

Order Dismissing Cause.

The above-entitled cause came on to be heard on this day on the application of defendants for an order of dismissal, and it appearing that the court has heretofore sustained the demurrer of defendants to the complaint of plaintiffs and has reached the decision that the defect ruled on cannot be cured by amendment, and the Court being sufficiently advised,

IT IS ORDERED that the above-entitled cause be, and the same hereby is dismissed, that defendants go hence without day and recover their costs of plaintiff, to be taxed.

Done in open court this 11th day of October, A. D. 1922.

FRANK H. RUDKIN,
Judge.

Filed in the U. S. Dist. Court, Eastern District of Washington. Oct. 11, 1922. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy.

In the District Court of the United States, for the
Eastern District of Washington, Northern
Division.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, His Wife,
Plaintiffs,

vs.

THE BIG BEND LAND COMPANY, et al.,
Defendants.

Memorandum Opinion.

M. E. MACK,

Attorney for the Plaintiffs,

GRAVES, KIZER & GRAVES,

Attorneys for the Defendants.

RUDKIN, District Judge.—Section 819, Remington & Ballinger's Code, provides that the plaintiff, at the time of commencing an action of forcible entry or forcible detainer or unlawful detainer, or at any time afterwards, may apply to the Judge of the court in which the action is pending for a writ of restitution restoring to the plaintiff the property in the complaint described, and the Judge shall order a writ of restitution to issue. The writ shall be issued by the clerk of the superior court in which the action is pending, and be returnable in twenty days after its date; but before any writ shall issue prior to judgment the plaintiff shall execute to the defendant and file in court a bond in such

a sum as the court or Judge may order, with two or more sureties to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out.

The Defendant Big Bend Land Company attempted to commence such an action in one of the Superior Courts in this state against the present plaintiffs, and executed a bond with the defendants Hay and McCaustland as sureties, conditioned as provided by law.

A writ of restitution thereupon issued, and under and by virtue of the writ the sheriff removed the defendants in that action from the property and placed the plaintiff in possession. The plaintiff had judgment in the Superior Court, but upon appeal the judgment was reversed by the Supreme Court on the ground that the summons was defective and void and the court acquired no jurisdiction over the person of the defendants.

Big Bend Land Co: vs. Huston, 98 Wash. 640.

The present action was thereupon instituted on the bond in the unlawful detainer case. The defendants have demurred to the complaint on the ground that it fails to state facts sufficient to constitute a cause of action. The particular objection urged is that inasmuch as the Court acquired no jurisdiction in the unlawful detainer case the bond

in question was null and void. This contention must be sustained.

In *State ex rel. Huston vs. Big Bend Land Company*, 100 Wash. 425, it was held that the Court acquired no jurisdiction in the unlawful detainer proceeding, and that the process under which the present plaintiffs were ousted from the property was so utterly void that the Superior Court did not even have jurisdiction to grant restitution upon the dismissal of the action. Under such circumstances the authorities are quite uniform that the bond is void.

Davis vs. Huth, 43 Wash. 383.

Steele vs. Crider, 61 Fed. 480.

U. S. vs. Morris' Heirs, 153 Fed. 240.

Bank vs. Mixter, 124 U. S. 721.

The demurrer is therefore sustained, and inasmuch as the defect cannot be cured by amendment, an order of dismissal will be entered.

Filed in the U. S. District Court, Eastern District of Washington. Oct. 6, 1922. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy.

In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision, Sitting at Spokane, in said District.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, his
wife,

Plaintiffs,

vs.

THE BIG BEND LAND COMPANY, a Corpora-
tion, E. T. HAY and J. C. McCAUSTLAND,
Defendants.

Petition for Writ of Error.

To the Judge of the District Court aforesaid:

Now come R. E. Huston and Clara S. Huston,
his wife, the plaintiffs above named, by attorneys,
and respectfully show that on the 7th day of Octo-
ber, 1922, the Court filed herein its memorandum
decision herein wherein it sustained the demurrer
of the defendants to the complaint herein on the
ground that the same did not state *state* facts suffi-
cient to constitute a cause of action, that the defect
could not be cured by amendment, and ordered that
the action be dismissed, and that on such decision
a final judgment was entered on the 11th day of
October, 1922, dismissing said action and for costs
in favor of defendants and against plaintiffs, your
petitioners.

Your petitioners feeling themselves aggrieved by
the said decision and judgment entered thereon as

aforesaid, herewith petition the Court for an order allowing them to prosecute a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit under the laws of the United States in such cases made and provided.

Wherefore, premises considered, your petitioners pray that a writ of error do issue that an appeal in this behalf to the United States Circuit Court of Appeals aforesaid, sitting at the city of San Francisco, in said circuit, for the correction of the errors complained of and herewith assigned, be allowed and that an order be made fixing the amount of the security to be given by plaintiffs in error conditioned as the law directs, and upon giving such bond as may be required that all further proceedings may be suspended until the determination of said writ of error by the Circuit Court of Appeals.

M. E. MACK,

JOHN G. BARNES,

Attorneys for Petitioners in Error.

Writ of error granted this third day of April, 1923. Bond fixed at the sum of Five Hundred Dollars.

JEREMIAH NETERER,

Judge.

Filed in the U. S. District Court, Eastern District of Washington. Apr. 3, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy.

In the District Court of the United States for the Eastern District of Washington, Sitting at the City of Spokane, in Said District.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, his wife,

Plaintiffs,

vs.

THE BIG BEND LAND COMPANY, a Corporation, E. T. HAY and J. C. McCAUSTLAND, Defendants.

Assignments of Error.

Now comes R. E. Huston and Clara S. Huston, his wife, the plaintiffs in the above numbered and entitled cause, and in connection with their petition for a writ of error in this cause, assigns the following errors which plaintiffs in error aver occurred on the trial thereof, and upon which they rely to reverse the judgment entered herein as appears of record:

1. That the Court erred in sustaining the demurrer to the complaint filed in this cause for the reason that the same did not state facts sufficient to constitute a cause of action.

2. That the Court erred in denying to plaintiffs the right to amend their said complaint herein, and to file such amended complaint.

3. That the Court erred in making and entering

judgment herein that this cause be dismissed, and defendants recover their costs.

Wherefore, plaintiffs in error pray that the judgment of said Court be reversed, etc.

M. E. MACK,
JOHN G. BARNES,
Attorneys for Plaintiffs in Error.

Filed in the U. S. District Court, Eastern District of Washington. April 3, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy.

In the District Court of the United States for the Eastern District of Washington, Northern Division, Sitting at Spokane, in said District.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, his wife,

Plaintiffs in Error,

vs.

THE BIG BEND LAND COMPANY, a Corporation, E. T. HAY and J. C. McCAUSTLAND, Defendants in Error.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, R. E. Huston and Clara S. Huston, his wife, plaintiffs in error, as principals, and Massachusetts Bonding and Insurance Company, a corporation, as surety, are held and firmly bound unto the Big Bend Land Company, a corporation, E. T.

Hay and J. C. McCaustland, defendants in error in the full and just sum of Five Hundred Dollars, to be paid to the said The Big Bend Land Company, E. T. Hay and J. C. McCaustland, its and their attorneys, successors, administrators, executors or assigns, to which payment well and truly to be made we bind ourselves, our successors, assigns, executors and administrators jointly and severally by these presents.

Signed and dated this the third day of April, A. D. 1923.

Whereas, lately at a regular term of the District Court for the Eastern District of Washington, Northern Division, sitting at the city of Spokane, in said district, in a suit pending in said court between R. E. Huston and Clara S. Huston, his wife, as plaintiffs, and The Big Bend Land Company, a corporation, E. T. Hay and J. C. McCaustland, as defendants, cause No. 3577 on the Law Docket of said court, final judgment was rendered against the said plaintiffs, that the said cause of action be dismissed and said defendants recover their costs to be taxed, and the said R. E. Huston and Clara S. Huston have obtained a writ of error, and filed a copy thereof in the Clerk's office of the said court, to reverse the judgment of the said court in the aforesaid suit; and a citation directed to the said The Big Bend Land Company, E. T. Hay and J. C. McCaustland citing it and them to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco,

in the State of California, according to law within thirty days from the date hereof.

Now, the condition of the above obligation is such that if the said R. E. Huston and Clara S. Huston shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to be and remain in full force and virtue.

R. E. HUSTON.

CLARA S. HUSTON.

By JOHN G. BARNES,

Their Attorney.

MASSACHUSETTS BONDING AND INSUR-
ANCE COMPANY.

By HENRY S. JACKSON,

Attorney in Fact.

Attest: SETH H. MORFORD,

Attorney in Fact.

The foregoing bond approved this 3d day of April, 1923.

JEREMIAH NETERER,

Judge.

Filed in the U. S. District Court, Eastern District of Washington. Apr. 3, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy.

In the District Court of the United States for the Eastern District of Washington, Northern Division, Sitting at Spokane, in said District.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, his wife,

Plaintiffs in Error,

vs.

THE BIG BEND LAND COMPANY, a Corporation, E. T. HAY and J. C. McCAUSTLAND, Defendants in Error.

Writ of Error (Original).

United States of America,—ss.

The President of the United States to the Hon. Judge of the District Court of the United States for the Eastern District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between R. E. Huston and Clara S. Huston, his wife, plaintiffs in error, and The Big Bend Land Company, a corporation, E. T. Hay and J. C. McCaustland, defendants in error, a manifest error has happened to R. E. Huston and Clara S. Huston, his wife, plaintiffs in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you

if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, where said Court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States should be done.

Witness the Hon. WILLIAM H. TAFT, Chief Justice of the United States, this the third day of April, 1923.

[Seal] ALAN G. PAINE,
Clerk of the United States District Court for the
Eastern District of Washington.

Allowed this the third day of April, A. D. 1923.

JEREMIAH NETERER,
United States Judge.

[Endorsed]: No. 3577. R. E. Huston, et ux. vs. The Big Bend Land Co. Writ of Error. Filed in the U. S. District Court, Eastern Dist. of Washington. Apr. 3, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy.

In the District Court of the United States for the Eastern District of Washington, Northern Division, Sitting at Spokane, in said District.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, his wife,

Plaintiffs in Error,

vs.

THE BIG BEND LAND COMPANY, a Corporation, E. T. HAY and J. C. McCAUSTLAND, Defendants in Error.

Writ of Error (Copy).

United States of America,—ss.

The President of the United States to the Hon. Judge of the District Court of the United States for the Eastern District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you between R. E. Huston and Clara S. Huston, his wife, plaintiffs in error, and The Big Bend Land Company, a corporation, E. T. Hay and J. C. McCaustland, defendants in error, a manifest error has happened to R. E. Huston and Clara S. Huston, his wife, plaintiffs in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you

if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, where said Court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States should be done.

Witness the Hon. WILLIAM H. TAFT, Chief Justice of the United States, this the third day of April, 1923.

ALAN G. PAINE,
Clerk of the United States District Court for the
Eastern District of Washington.

Allowed this the third day of April, A. D. 1923.

JEREMIAH NETERER,
United States Judge.

Filed in the U. S. District Court, Eastern District of Washington. Apr. 3, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy.

In the District Court of the United States for the Eastern District of Washington, Northern Division, Sitting at Spokane, in said District.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, his wife,

Plaintiffs in Error,

vs.

THE BIG BEND LAND COMPANY, a Corporation, E. T. HAY and J. C. McCAUSTLAND, Defendants in Error.

Citation on Writ of Error (Original).

United States of America to The Big Bend Land Company, a corporation, E. T. Hay and J. C. McCaustland, Defendants in Error, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's office of the United States District Court for the Eastern District of Washington, Northern Division, wherein R. E. Huston and Clara S. Huston, his wife, are plaintiffs in error, and you are defendants in error to show cause, if any there be, why the judgment rendered against the said R. E. Huston and Clara S. Huston, plaintiffs in error, as in said writ of

error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS, the Hon. JEREMIAH NETERER, Judge of the United States District Court of Eastern Washington, this third day of April, 1923.

[Seal] JEREMIAH NETERER,
Judge of the United States District Court for the District of Eastern Washington.

Receipt of a copy, and service of the foregoing citation this 3d day of April, 1923, is hereby admitted and acknowledged.

GRAVES, KIZER & GRAVES,
Attorneys for The Big Bend Land Co., E. T. Hay
and J. C. McCaustland, Defendants in Error.

[Endorsed]: No. 3577. R. E. Houston et ux vs. The Big Bend Land Co. Citation on Writ of Error. Filed in the U. S. District Court, Eastern District of Washington. Apr. 3, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy.

In the District Court of the United States for the Eastern District of Washington, Northern Division, Sitting at Spokane, in said District.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, his wife,

Plaintiffs in Error,

vs.

THE BIG BEND LAND COMPANY, a Corporation,
E. T. HAY and J. C. McCAUSTLAND,
Defendants in Error.

Citation on Writ of Error (Copy).

United States of America to The Big Bend Land Company, a corporation, E. T. Hay and J. C. McCaustland, Defendants in Error, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's office of the United States District Court for the Eastern District of Washington, Northern Division, wherein R. E. Huston and Clara S. Huston, his wife, are plaintiffs in error, and you are defendants in error to show cause, if any there be, why the judgment rendered against the said R. E. Huston and Clara S. Huston, plaintiffs in error, as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS, the Hon. JEREMIAH NETERER, Judge of the United States District Court of Eastern Washington, this third day of April, 1923.

JEREMIAH NETERER,
Judge of the United States District Court for the District of Eastern Washington.

Receipt of a copy, and service of the foregoing citation this 3d day of April, 1923, is hereby admitted and acknowledged.

GRAVES, KIZER & GRAVES,
Attorneys for The Big Bend Land Co., E. T. Hay
and J. C. McCaustland, Defendants in Error.

Filed in the U. S. District Court, Eastern District of Washington. Apr. 3, 1923. Alan G. Paine, Clerk. A. P. Rumburg, Deputy. .

In the District Court of the United States for the
Eastern District of Washington, Northern Division,
Sitting at Spokane, in said District.

No. 3577.

R. E. HUSTON and CLARA S. HUSTON, his
wife,

Plaintiffs in Error,

vs.

THE BIG BEND LAND COMPANY, a Corporation,
E. T. HAY and J. C. McCAUSTLAND,
Defendants in Error.

Praeipie for Transcript of Record.

To the Hon. Clerk of the United States District Court for the Eastern District of Washington:

Please prepare and return a transcript of the following papers and records in cause No. 3577 with the writ of error in the above-entitled cause:

1. The complaint.
2. The summons and return.

3. The demurrer of the defendants.
4. The judgment.
5. The memorandum opinion of the Court.
6. Petition for writ of error, order allowing and fixing bond indorsed thereon.
7. Assignment of Errors.
8. Bond and approval indorsed thereon.
9. The writ of error.
10. Citation in error and acceptance of service indorsed thereon.
11. Clerk's certificate.
12. Praeceptum.

M. E. MACK,
JOHN G. BARNES,
Attorneys for Plaintiffs in Error.

Filed in the U. S. District Court, Eastern District of Washington. April 5, 1923. Alan G. Paine, Clerk. By A. P. Rumburg, Deputy.

In the District Court of the United States for the Eastern District of Washington, Northern Division.

United States of America,
Eastern District of Washington,—ss.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Alan G. Paine, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify that the foregoing typewritten pages are a full, true and correct and

complete copy of the record, papers, and other proceedings in the foregoing entitled cause as called for by the plaintiff and plaintiff in error in its praecipe as the same remains of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on writ of error from the judgment of the District Court of the United States for the Eastern District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit, San Francisco, California, which writ of error was lodged and filed in my office on April 3, 1923.

I further certify that I hereto attach and herewith transmit the original writ of error and the original citation issued in this cause.

I further certify that the fees of the Clerk of this Court in preparing and certifying to the foregoing typewritten record amounts to the sum of \$8.15, which sum has been paid in full by the plaintiff and plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at Spokane, in said district, this 20th day of April, 1923.

[Seal]

ALAN G. PAINE,
Clerk.

[Endorsed]: No. 4108. United States Circuit Court of Appeals for the Ninth Circuit. R. E. Huston and Clara S. Huston, His Wife, Plaintiffs in Error, vs. The Big Bend Land Company, a Cor-

poration, E. T. Hay and J. C. McCaustland, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Eastern District of Washington, Northern Division.

Received April 24, 1923.

F. D. MONCKTON,
Clerk.

Filed September 17, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

